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Bluntschli.

Bluntschli's Life Work.

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BLUNTSCHLI'S

LIFE-WORK

by Herbert Baxter Adams

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To C. W. Ernst

With the regards of

H. B. Adams

May 9, 1888

PRESENTED TO THE

SEMINARY OF

HISTORICAL AND POLITICAL SCIENCE

BY

HERBERT B. ADAMS

JOHNS HOPKINS UNIVERSITY

June, 1884

"The study of communal life in America, to which you are now devoting yourselves, will certainly prove very fruitful. The community is a preparatory school for the state. The structure of republics has its foundation in the independence of communities."—*Bluntschli*

BLUNTSCHLI'S LIFE-WORK.

THE most cherished portion of the Bluntschli Library, now in Baltimore, is the collection of his own writings. This is the Bluntschli Library par excellence. The true heart of it is here and it represents better than all else the life-work and enduring influence of a great man. His history can here be read from the very beginning of his academic course. Here are the bound note-books which best of all represent his methodic training as a University student. These are a dozen large volumes, all written in that same neat, fine hand which characterized Bluntschli's writing until the end of his days. One of the earliest note-books is inscribed "C.

Bluntschli, *stud. jur.* 1826." He was then eighteen years old and was following lectures upon Roman Law, given by Professor Keller in the so-called Political Institute of Zürich, a law school which flourished there before the University was founded (1832). Keller was a pupil of Savigny and in fact succeeded him at the University of Berlin. Bluntschli, in his autobiography, says it was by Keller's recommendation that he went to Berlin to study under the famous historian of Roman Law. He adds that he often visited at Savigny's house and worked in his private library. What he was doing there becomes apparent from the preface of a Berlin Prize Essay, crowned by the Law Faculty of that University. It was the "Entwicklung der Erbfolge gegen den letzten Willen," by Johann Caspar Bluntschli, who thanks his master for materials found in his private collection. This was Bluntschli's first book. It was published at Bonn in 1829, when he had reached his majority. In the *Götttingische Gelehrte Anzeigen* for the 19th of November, 1829, the work is critically reviewed

at considerable length by one who hazards the opinion that the manifestly Swiss name of the author would become more familiar to jurists than it was just then. This notice, doubtless the first Bluntschli ever had from the learned world, is preserved in his first book. Savigny and Puchta wrote him congratulatory letters and Bluntschli's career was begun. It appears from his thesis, and from his note-books, that, after spending two semesters at Berlin, 1827-8, he went to Bonn, where he passed the winter and summer semesters of 1828-9 attending, among other lectures, those of Niebuhr on Roman History and the French Revolution. Thus the great student of ancient and modern politics, who, as German ambassador in Rome a few years before, had awakened the historical spirit in that young tutor, Francis Lieber, became also the guide, philosopher, and friend of John Caspar Bluntschli.

BLUNTSCHLI IN ZÜRICH.

After a winter semester spent in Paris, the young Doctor of Laws returned to Zürich, his Vaterstadt, in the spring of 1830. It was the year of the second French Revolution. It marks the beginning of his active life as teacher and politician. "Mein Leben," says Bluntschli in his autobiography, "wurde abwechselnd von der Wissenschaft und von der Politik erfüllt und bewegt." He began in that year as Privatdocent to lecture on Roman Law in the Political Institute. At the same time he became a secretary of the government and afterwards became a practising lawyer and a practical politician. He wrote in the summer of 1830: "Über die Verfassung des Standes Zürich," declaring himself for constitutional reform but opposing radical measures. In this tract the key-note of his life-work was struck. Bluntschli was to be a mediator between History and Politics, between the old and the new. In 1831 he published "Das Volk und der Souverän," main-

taining that sovereignty did not rest with the mass of people but in legally constituted authority, and that a representative republic was better than an absolute democracy. In 1833 Bluntschli became Associate Professor, and in 1836, Professor in the newly founded University of Zürich. He early renounced Roman Law in favor of Swiss institutions. In 1838-9 was published his "Staats-und Rechtsgeschichte der Stadt und Landschaft Zürich," to which reference has elsewhere been made. This work in two volumes was Bluntschli's master-piece in Switzerland, although he afterwards, in 1847, published his "Geschichte der Republik Zürich," and, in 1846-9, his "Geschichte des Schweizerischen Bundesrechts von den ersten ewigen Bünden bis auf die Gegenwart," thus widening and deepening his historical studies and demonstrating to his countrymen that Switzerland was more truly Germanic than Germany herself. But his first great work convinced the Swiss legislators of his time that the laws and constitutions of the cantons must be in harmony with their historical development. He was

commissioned by the Great Council of Zürich, of which he became a member as early as 1837, to prepare a Civil Code for that Canton. The Code was prepared, and it was adopted almost without change in 1853. The Codes of many other Cantons, Schaffhausen, Zug, Nidwalden, Thurgau, and Graubünden are modelled after that of Zürich. Professor Rivier of Brussels, the editor of the *Revue de Droit International et de Legislation Comparée*, says, "The Zürich Code is one of the most important works of the century. The principles of modern jurisprudence are here harmonized with traditional customs. It is popular and unique; it is complete and yet free from excessive details." Professor Holtzendorff of Munich says, that, since the appearance of the Austrian Code, there is no work which compares with that of Bluntschli in independence and scientific importance. "Bluntschli's name," he declares, "will occupy for a long time to come, the highest place in the history of Swiss legislation."

BLUNTSCHLI IN MUNICH.

It was in the year 1848, after the outbreak of the third French Revolution, which affected Switzerland and Europe, that Bluntschli received his call to the University of Munich. Here, until the year 1861, he devoted his entire energy to political science and to German jurisprudence. His retirement from practical politics only increased his professorial interest in law and the science of government. The first great work belonging to the Munich period of Bluntschli's activity was his *Allgemeines Staatsrecht*, in two volumes, which appeared in 1852 and which took final shape in 1875 as the *Lehre vom modernen Staat*, in three volumes. Beyond a doubt this is Bluntschli's *chef d'œuvre*. In its revised form, it represents not only the union of the historical and philosophical methods, but the rich fruit of the author's political experience. Holtzendorff, speaking of this treatise, says, "Since Montesquieu no work has appeared in the field of public law which can

be compared with that of Bluntschli in readability, suggestive power, ideal worth, practical sense, political insight, and historical breadth of view." Another great work which had its origin in Munich (1857) but its completion in Heidelberg (1870) is the *Deutsches Staatswörterbuch*, in eleven volumes, made up of special monographs upon a great variety of topics in historical, political, and economic science by the most distinguished professors, jurists, and publicists in Germany. The idea and some of the substance of this great work may be found in Lalor's Cyclopaedia of Political Science, Political Economy, and of the Political History of the United States. At Munich also Bluntschli interested himself in the study of jurisprudence. Not only was the Zürich Code prepared here, but also Bluntschli's text-book of German Law, which has passed through various editions since the first in 1853. The author says of this work that it reveals his preference for German institutions and German conceptions of law. From early experience at Zürich, Bluntschli was convinced that the system of

Roman Law represented by German professors was not historically adapted to the wants of the German people. He strove to introduce the national spirit into jurisprudence as taught at the universities, but he afterwards said that the only hope for German law was in national legislation. While at Munich, Bluntschli, in association with two colleagues, Arndt and Pözl founded the *Kritische Übersicht für Gesetzgebung und Rechtswissenschaft*, which still continues as the *Kritische Vierteljahrschrift* in the same important field. Another impulse towards national legislation was the founding of the German Congress of Jurists which Bluntschli twice served as President. Although at Munich Bluntschli enjoyed the favor of the King and the society of artists and men of letters, he was nevertheless discontented. One thing, he says, was lacking. There was no field for political activity. He had no hand in legislation or in the councils of the government. Bluntschli was a politician as well as a professor. Although he had left Switzerland to escape politics, he was now to leave Bavaria in order to return to

them. In passing, it should be noted that just as his commission to prepare the Zürich Code shows that he left a good name behind him in Switzerland, so now a government commission from Munich to prepare a *Geschichte der neueren Staatswissenschaft, des allgemeinen Staatsrechts und der Politik*, published in Munich in 1864, three years after Bluntschli's departure, shows that here also in Bavaria, his local fame endured.

BLUNTSCHLI IN HEIDELBERG.

In 1861 Bluntschli was called to the University of Heidelberg as successor of Robert von Mohl, whose History of Political Science and other encyclopædic works in this field rank with those of Bluntschli. From the vantage-ground of Heidelberg, Bluntschli returned to practical politics. The Grand Duke of Baden, son-in-law of Kaiser Wilhelm, appointed Bluntschli to a place in the upper house of the Baden Diet and made him a Privy Councillor. For twenty years, indeed until the day of his death, Bluntschli continued his connection with affairs

of state. He was largely instrumental in the constitutional reforms of Baden in 1864, and was one of the earliest representatives of German unity, declaring himself for Prussia and Bismarck at a time when all the South German States were opposed to Prussian policy. Bluntschli represented Baden in the Tariff Parliament of 1867, and, in Berlin, did much to prepare the way for union between North and South Germany. Bluntschli was always a mediator between extremes, whether in politics, science, or religion, and for this reason, perhaps, was always in demand as a presiding officer in religious, scientific, and political assemblies. He was for many years president of the Grand Synod of Baden, and repeatedly guided the deliberations of the Protestant Union of Germany, and of the Congress of German jurists. He was chosen as the first president of the *Institut de Droit International*.

Among the Heidelberg jurists, *die aus allen Ländern in der reizvollen Neckarstadt zusammenströmen*, began Bluntschli's international career. For a double decade he looked out from that

beautiful Neckar-valley, which broadens into Rhine-land, upon events which have moved the world. The very first year of his Heidelberg professorship saw William I. made King of Prussia and Victor Emanuel made King of United Italy; it saw the emancipation of serfs in Russia and the outbreak of civil war in America. Two years later, in 1863, Francis Lieber, at the request of President Lincoln, codified the famous "Instructions for the Government of Armies of the United States in the Field." To Bluntschli's far-seeing mind this work was most significant. It suggested the codification for Germany of *Das Moderne Kriegerrecht*, as Lieber had codified it for America. Bluntschli's work was published in 1866, that year of quick and decisive war, when Prussia conquered Austria and the South German States. The next year, when Prussia had formed the North German Confederation of twenty-two States, and when Bluntschli was working in the Tariff Parliament for a larger union, appeared *Das Moderne Völkerrecht der Civilisirten Staaten*, which was simply the expansion of his *Kriegerrecht* and of

the original idea of Francis Lieber. Indeed, the preface to the first edition is in the form of a letter to "Professor Dr. Franz Lieber in New York," acknowledging that the latter's idea of a military code had suggested to Bluntschli the idea of an international code. The preface to Bluntschli's second edition in 1872 is "*Ein zweiter Brief an Professor Franz Lieber.*" Lieber *Freund*, said Bluntschli, we have both praised God that he has permitted us in our old age to see the rising unity of the German people and the foundation of the German Empire. But, in a foot-note to this letter which was written October 1, 1872, Bluntschli adds that it never reached its destination, for, soon after it was dispatched, the news came by telegraph that Lieber was dead (October 2, 1872). His friend in Heidelberg mentions the fact that he received, a fortnight later, Lieber's last article, which was upon the subject of "Religion and Law," published in the New York *Evening Post*. It is perhaps a suggestive fact as to one of the methods of Bluntschli's literary activity that his last article was likewise published in a

popular journal, *Die Gegenwart*, on the 10th of September, 1881. The article is one of seven columns and is entitled "*Tröstliche Gedanken. Englische und Deutsche Art.*" His comforting thought for the German people, in their parliamentary quarrels, is that the fundamental idea of the German Constitution—a good civil service—is by no means a low stage of development in the life of the modern state. On the contrary, it perhaps stands nearer the highest ideal of state-life than does the party-government of an English Parliament, however noble.

In the Bluntschli Library is now preserved a letter in Bluntschli's hand-writing, sent to Baltimore in September, 1879, on "*Die Bedeutung Liebers für die Wissenschaft vom Staat und für das Völkerrecht,*" of which a translation was published in the *International Review*, for January, 1880, and also as preface to the second volume of *Lieber's Miscellaneous Writings*, edited by President D. C. Gilman. In this letter, Bluntschli writes: "The intimate, personal connection in which I stood with Lieber in his declining years, although, indeed,

through interchange of letters and not through meetings face to face, was for me a constant stimulus and source of satisfaction. This relation with Lieber was animated and strengthened by great and world-historic events: first of all, the war for the American Union, from 1861 to 1865; then the war between Austria and Prussia in 1866; and finally, the Franco-Prussian war. From 1860 to 1870, Francis Lieber in New York, Edward Laboulaye in Paris, and I in Heibelberg, formed what Lieber used to call a scientific clover-leaf."

On the 17th of October, 1881, the centenary of the British surrender at Yorktown, one of Bluntschli's two Baltimore pupils wrote to his old Heidelberg professor, reminding him of the the international significance of that local celebration. There before Yorktown, representatives of France and Germany, England and the United States,—North and South,—countries and sections of country that had once been divided by war, were now together celebrating peace. The pupil ventured to remind his master that the victory at Yorktown, gained by

the strategy of Washington, the engineering of Steuben and the gallantry of the French allies, was, perhaps, one of the four most decisive battles of the last hundred years; that Yorktown was the beginning of an international quadrilateral, completed by Waterloo, Sadowa, and Sedan; and that these four battles, with their diplomatic results, were the international ramparts of the present century.

This letter to the author of the *Modern Law of Nations* by an American pupil who on that memorable day promised to begin a translation of Bluntschli's Code into English (about which there had been some correspondence), never reached Bluntschli's hands. In November word came from one of his family in Heidelberg, "Your letter unfortunately arrived too late." Bluntschli died suddenly on the 21st of October, 1881, only four days after the celebration at Yorktown, which he would have surely hailed as an international clover-leaf more auspicious than the trifolium once represented by himself, Lieber, and Laboulaye. But if Yorktown was a scene of peace for the repre-

sentatives of four great nations, Bluntschli's dying benediction, as he closed the Baden Synod of Evangelical Churches—"Peace on Earth, Good Will towards Men"—was no less significant to the world. *Ehre sei Gott in der Höhe, Friede auf Erden, und den Menschen ein Wohlgefallen*, these were the last words of a Christian statesman, whose life had been devoted to mediation between religious sects, political parties, rival sections, and hostile nations. It is fitting to pray that one's country may be delivered from battle, the chief magistrate from murder, but from sudden death so peaceful as that of Bluntschli not even his best friends could have wished him deliverance. For surely it is a gracious act of divine Providence for a great man, crowned with honors and with years, his work complete in Church and State, to be thus gathered to his fathers.

When Bluntschli died, everywhere in Europe statesmen and diplomatists, jurists and publicists, professors and students, knew that a catholic, cosmopolitan spirit had passed away. At the fiftieth anniversary of Bluntschli's doc-

torate, in 1879, had come words of felicitation from twenty-nine Universities of European fame, but now from still wider circles came messages of sympathy to Bluntschli's family in Heidelberg. At Geneva in 1864, at Brussels in 1874, and at Oxford in 1880, Bluntschli had received the most distinguished honors of his life, but these were not so great as the honors that came to him in death. One hundred and twenty-one of the first jurists, diplomats, and professors in Germany, Switzerland, Austria, Italy, France, England, Belgium, Holland, Sweden, Russia, and the United States, subscribed to the following unanimous opinion; "The present generation will not forget what Bluntschli did as a legislator for Switzerland, Baden, and Germany; what he accomplished for University-students as a teacher of Law and Politics; how, before ecclesiastical assemblies, he defended freedom of conscience and religious toleration; how he endeavored to widen the political culture of the common people by means of the press; how he strove at the Brussels Conference to alleviate the evils of European war-

fare." See the *Aufruf*,—*Bluntschli Stiftung für Allgemeines Staatsrecht und Völkerrecht, Deutsche Zeit-und Streit-Fragen*, XI. Heft 161. (Appendix to Holtzendorff's article on "Bluntschli.") Any individual eulogy seems unnecessary after such international praise. The clergy who sat with Bluntschli in the General Synod, the professors who were associated with him in University-life, the lawyers and politicians who knew him best have paid high tribute to his memory. Perhaps Holtzendorff, professor of law and politics in Munich, has said the most in fewest words: "Bluntschli was not merely a jurist and a scholar. He was by turns a legislator and a public official, a church officer and a president of the synod, a party-leader and an agitator, a representative of his folk and a popular orator, a statesman and a friend of humanity, a publicist, a writer for newspapers, a legal adviser, a teacher of jurisprudence, a counsellor of princes, a member of diplomatic conferences, and a president of popular assemblies."

No more touching tribute has yet been paid to Bluntschli's memory than that by the stu-

dents of Heidelberg. Young men from Switzerland and Germany, from Greece and Russia, from Eastern Europe and Western America, have long fraternized upon the banks of the Neckar; and, as a symbol of international regard for Bluntschli, a native Greek was persuaded to deliver, in their name, the funeral oration. The Anglo-Americans laid a wreath of flowers upon the breast of the dead scholar and statesman, whose sympathies embraced the New World with the Old, whose culture united ancient history and modern politics. That old University of Heidelberg, the oldest in Germany, probably never saw, during the five hundred years of its existence, a more remarkable procession than that which moved down the *Anlage* from the *Peterskirche* to the *Friedhof* outside the ancient town. The Heidelberg newspapers of the day describe the appearance of that funeral march on the 24th of October. There were present all the student-corps or secret societies in full uniform, the various *Verbindungen* and *Burschenschaften*, with the entire academic throng of students and profes-

sors, the Baden *Officierscorps*, public officials of the city and Grand Duchy, masonic lodges from various cities, and the towns-folk of Heidelberg. But there was something more than local interest, municipal parade, and student pageantry in that great procession. It symbolized universal reverence for a great man whose name and fame the world will not let die.

Bluntschli lies buried in that beautiful *Friedhof*, or Court of Peace, which looks out from the Neckar hillside towards the Vosges mountains and the borders of France. "*Ein ziemlich weiter Blick*" is that from the grave of Bluntschli. "A pretty wide view after all is that which one gets from Heidelberg," said the Herr Geheimerath, speaking at a fourth of July banquet given in 1875 by the Anglo-American Club. He was describing the scientific vantage-ground of that old University on the border of nations. "*Ein ziemlich weiter Blick*" is that afforded by the life and death of Bluntschli himself. Here is a man whose original standpoint of culture was the most enduring foundation ever laid by the Roman world—systematic

law. But here is a man who, among the first of his Swiss countrymen and German kindred, saw that the legal and political problems of the nineteenth century were not to be solved by quotations from the Pandects. He saw that states must work out their own salvation from existing conditions and not by means of borrowed systems of law and government. Bluntschli was a man whose horizon of scientific interest widened gradually from the narrow limits of a Swiss Canton, first to German States, then to Modern Europe, and to the Law of Nations. Bluntschli himself says of his *Völkerrecht*: "It is substantially the same kind of work as that which I early attempted with success at Zürich upon the narrow field of a little Swiss republic with reference to private law. The principles of that work were now only transferred to the broader field of civilized states in general, and were applied to the moving stream of international relations and legal opinions." His opinions, at first sought by his fellow burghers upon petty questions of local law, were at last requested by European governments and diplo-

mats upon international problems. Bluntschli wrote upon such topics as the Alabama Question, the Right of Privateering, the Responsibility and Irresponsibility of the Pope, the Berlin Congress, the Legal Status of the Jews in Roumania, the Importance and the Progress of Modern International Law. More than eighty published works, books, pamphlets, and addresses could be enumerated in his bibliography, without mentioning the vast number of newspaper articles that came from his pen. Perhaps the most memorable of his letters is that in answer to Count Von Moltke's letter to Bluntschli criticising the laws of war, as adopted by the *Institut* at its session in Oxford, 1880. Both letters are preserved in the *Revue de Droit International*, for February, 1881. Time will show which is to rule the world, war or law.

There is a power proceeding from the ideas of great men which, like waves of light or sound, does not quickly die away. There is hope for Bluntschli's lasting influence and widening fame in that writings from his pen have already been translated into fourteen different

living languages. His *Völkerrecht* is quoted in French by statesmen throughout Europe and America. The very year of Bluntschli's death it was translated into Chinese. His students are now scattered in many lands. They too will widen his influence. His successors at Heidelberg will perpetuate his memory in the most effective way. Professors there and throughout Europe, together with many jurists and statesmen, have joined in a public appeal for a so-called "*Bluntschli-Stiftung*", or an endowment whereby Political Science may be promoted by prize essays upon appointed themes. The field of competition will be open to students from any nation, writing in Latin or in any of the great languages of modern culture. The plan is to connect the Bluntschli-foundation with the main object of Bluntschli's life, which was the investigation of the entire field of Politics, national and international. It is proposed to place the endowment under the control of the three University faculties with which Bluntschli was connected, namely, Zürich, Munich, and Heidelberg, and of the *Insti-*

tut de Droit International at Brussels, of which he was the first president. The international character of the proposed endowment makes it a most fitting monument to Bluntschli, and we may hope that through it his name will become "*ein dauernder Mittelpunkt für die staatswissenschaftlichen Bestrebungen der modernen Culturstaaten.*"

It would be a great impulse and incentive to American students of History and Politics if an American prize should be instituted in memory of Bluntschli, who, while representing internationality, was always a good friend of America and of American youth.

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This list does not embrace Bluntschli's legal opinions, controversial writings, and numerous articles in the *Gegenwart* and other periodicals.

JOHN MURPHY & CO., PRINTERS,
BALTIMORE.

*John
J. M.*



